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J.P. Murray Food Service, Inc. and United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO.

M&M Dining Service, Inc. and United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO. Cases 7-CA-41098 and 7-CA-41261(1)

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon charges filed by the Union on June 22 and August 11, 1998, the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on September 25, 1998, against J.P. Murray Food Service, Inc. and M&M Dining Service, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondents failed to file an answer.

On February 1, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On February 4, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated October 14, 1998, notified each Respondent that unless an answer were received by October 28, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent J.P. Murray Food Service, Inc. (Respondent Murray), a corporation with an office and place of business in the A.C. Rochester-GMC plant in Wyoming, Michigan (Wyoming cafeteria), had been engaged in providing cafeteria and food vending services until ceasing its business operations on about April 3, 1998. During the 12-month period ending December 31, 1997, Respondent Murray, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Wyoming cafeteria, goods valued at more than \$50,000 directly from suppliers located outside the State of Michigan.

At all material times, Respondent M&M Dining Service, Inc. (Respondent M&M Dining), a corporation with an office and place of business in the General Motors Corporation plant in Coopersville, Michigan (Coopersville cafeteria), had been engaged in providing cafeteria and food vending services until ceasing its business operations on about April 3, 1998. During the 12-month period ending December 31, 1997, Respondent M&M Dining, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Coopersville cafeteria, goods valued at more than \$50,000 directly from suppliers located outside the State of Michigan. We find that Respondent Murray and Respondent M&M Dining are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent Murray, herein called the Murray Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All food service and vending employees employed by Respondent J.P. Murray at the Wyoming cafeteria; but excluding all managers, supervising chefs, bookkeepers, cashiers, all other office personnel, guards and supervisors as defined in the Act.

Since about 1994 and at all material times, United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO, has been the designated exclusive collective-bargaining representative of the Murray Unit, and since then the Union has been recognized as such representative by Respondent Murray. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 21, 1997, to January 21, 2000.

At all material times since about 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the Murray Unit.

Since about March 30, 1998, and continuing to date, Respondent Murray, by its agents Mark and Marianne Pettersch, has failed and refused to accept and to process a grievance under its collective-bargaining agreement with the Union concerning the discharge of its employee Pam Frantz.

On about April 3, 1998, Respondent Murray ceased business operations at the Wyoming cafeteria and terminated the employment of the employees in the Murray Unit. This subject relates to wages, hours and other terms and conditions of employment of the Murray Unit, and is a mandatory subject for the purposes of collective bargaining. Respondent Murray engaged in the cessation of its operations at the Wyoming cafeteria without affording the Union a meaningful opportunity to bargain over the effects of that conduct on the Murray Unit.

Since about April 2, 1998, and continuing to date, Respondent Murray has failed and refused to meet and bargain with the Union regarding the effects of its cessation of operations at the Wyoming cafeteria on the Murray Unit.

The following employees of Respondent M&M Dining, herein called the M&M Dining Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All food service and vending employees employed by Respondent M&M Dining at the Coopersville cafeteria; but excluding all office clerical employees, guards and supervisors as defined in the Act.

Since about 1994 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the M&M Dining Unit, and since then the Union has been recognized as such representative by Respondent M&M Dining. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 22, 1997, to May 24, 2000.

At all material times since about 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the M&M Dining Unit.

On about April 3, 1998, Respondent M&M Dining ceased business operations at the Coopersville cafeteria and terminated the employment of the employees in the M&M Dining Unit. This subject relates to wages, hours and other terms and conditions of employment of the M&M Dining Unit, and is a mandatory subject for the purposes of collective bargaining.

Respondent M&M Dining engaged in the above conduct without affording the Union a meaningful opportunity

to bargain over the effects of that conduct on the M&M Dining Unit.

Since about April 2, 1998, and continuing to date, Respondent M&M Dining has failed and refused to meet and bargain with the Union regarding the effects of its cessation of operations at the Coopersville cafeteria on the M&M Dining Unit.

Since about early April 1998, and continuing to date, Respondent Murray and Respondent M&M Dining have failed and refused to pay vacation and personal days accrued by members of the Murray Unit and the M&M Dining Unit, respectively, under the Respondents' collective-bargaining agreements with the Union described above. These subjects relate to wages, hours and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining.

The Respondents engaged in the conduct described above without the Union's agreement, without prior notice to the Union, and without affording the Union an opportunity to bargain with respect to this conduct.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by failing to bargain with the Union concerning the effects on the units' employees of their cessation of business operations at the Wyoming and Coopersville cafeterias, we shall order the Respondents, on request, to bargain with the Union concerning the effects of their decisions to cease these operations. In addition, we shall accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses they may have suffered as a result of the failure to bargain about such effects and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondents. We shall do so by ordering the Respondents to pay backpay to employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).¹

¹See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). In *Transmarine*, the Board ordered an employer that had unlawfully refused to bargain over the effects of its plant closure decision to, inter alia, pay unit employees at their normal rate of pay beginning 5 days

Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondents have unlawfully failed and refused to pay vacation and personal days accrued by the units' employees, we shall order the Respondents to pay the employees backpay, as computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that Respondent Murray has unlawfully refused to accept and to process a contractual grievance concerning the discharge of employee Pam Frantz, we shall order Respondent Murray to accept and process this grievance under the terms of the Respondent's collective-bargaining agreement with the Union.

ORDER

The National Labor Relations Board orders that the Respondent, J.P. Murray Food Service, Inc., Wyoming, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of the Respondent's cessation of its business operations at the A.C. Rochester-GMC plant in Wyoming, Michigan, and the termination of the unit employees.

All food service and vending employees employed by Respondent J.P. Murray at the Wyoming cafeteria; but excluding all managers, supervising chefs, bookkeepers, cashiers, all other office personnel, guards and supervisors as defined in the Act.

(b) Failing and refusing to accept and to process a grievance under its collective-bargaining agreement with the Union concerning the discharge of employee Pam Frantz.

(c) Failing and refusing to pay vacation and personal days accrued by unit employees under the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the cessation of the Respondent's business operations at the A.C. Rochester-GMC plant in Wyoming, Michigan, and the termination of the unit employees.

(b) Pay the employees in the unit described above their normal wages when in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the cessation of its business operations at the A.C. Rochester-GMC plant in Wyoming, Michigan and its termination of the unit employees; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;² or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from about April 3, 1998, when the Respondent ceased its business operations at the Wyoming cafeteria, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) Accept and process the grievance filed under the collective-bargaining agreement concerning the discharge of Pam Frantz.

(d) Pay employees the amounts due for vacation and personal days accrued under the collective-bargaining agreement, as set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of

after the Board's decision until the first of four events: (1) an effects bargaining agreement was reached; (2) a bona fide bargaining impasse was reached; (3) the union failed to timely request or commence bargaining; or (4) the union failed to bargain in good faith. Id. The Board further specified that "in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ." Id.

² *Melody Toyota*, 325 NLRB No. 158 (May 29, 1998).

the attached notice marked "Appendix A"³ to all current employees and former employees employed by the Respondent at any time since March 30, 1998.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Respondent, M&M Dining Service, Inc., Coopersville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of the Respondent's cessation of its business operations at the General Motors Corporation plant in Coopersville, Michigan, and the termination of the unit employees.

All food service and vending employees employed by Respondent M&M Dining at the Coopersville cafeteria; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to pay vacation and personal days accrued by unit employees under the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the cessation of the Respondent's business operations at the General Motors Corporation plant in Coopersville, Michigan, and the termination of the unit employees.

(b) Pay the employees in the unit described above their normal wages when in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the cessation of its business operations at the General Motors Corporation plant in Coopersville, Michigan and its termination of the unit employees; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this

Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;⁴ or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from about April 3, 1998, when the Respondent ceased its business operations at the Coopersville cafeteria, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) Pay employees the amounts due for vacation and personal days accrued under the collective-bargaining agreement, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix B"⁵ to all current employees and former employees employed by the Respondent at any time since April 2, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁴ *Melody Toyota*, supra.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of our cessation of business operations at the A.C. Rochester-GMC plant in Wyoming, Michigan, and the termination of the unit employees.

All food service and vending employees employed by us at the Wyoming cafeteria; but excluding all managers, supervising chefs, bookkeepers, cashiers, all other office personnel, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to accept and to process a grievance under our collective-bargaining agreement with the Union concerning the discharge of employee Pam Frantz.

WE WILL NOT fail and refuse to pay vacation and personal days accrued by unit employees under the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on the unit employees of the cessation of our business operations at the A.C. Rochester-GMC plant in Wyoming, Michigan, and the termination of the unit employees.

WE WILL pay limited backpay to the unit employees in connection with our failure to bargain with the Union concerning the effects of our cessation of operations.

WE WILL accept and process the grievance filed under the collective-bargaining agreement concerning the discharge of Pam Frantz.

WE WILL pay employees the amounts due for vacation and personal days accrued under the collective-bargaining agreement, with interest.

J.P. MURRAY FOOD SERVICE, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL not fail and refuse to bargain in good faith with United Dairy, Bakery and Food Workers Local 386, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of our cessation of business operations at the General Motors Corporation plant in Coopersville, Michigan, and the termination of the unit employees.

All food service and vending employees employed by us at the Coopersville cafeteria; but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to pay vacation and personal days accrued by unit employees under the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on the unit employees of the cessation of our business operations at the General Motors Corporation plant in Coopersville, Michigan, and the termination of the unit employees.

WE WILL pay limited backpay to the unit employees in connection with our failure to bargain with the Union concerning the effects of our cessation of operations.

WE WILL pay employees the amounts due for vacation and personal days accrued under the collective-bargaining agreement, with interest.

M&M DINING SERVICE, INC.